

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 14, 2025

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref No.: LOD 29157

OAHU

Amend Perpetual Grant of Non-Exclusive Easement under Land Office Deed No. S-29157, Hawaiian Telcom Services Company, Inc., Grantee; Makaha and Keaau, Waianae, Oahu, TMK: (1) 8-4-001:seaward of 019 (formerly known as (1) 8-4-001:seaward of 012).

The purposes of the amendment are to increase the easement area and consideration due to the State and to replace the existing map and description attached to the easement with a revised map and description showing the increased area.

BACKGROUND:

At its meeting of November 10, 2016, under agenda item D-10 (**Exhibit 1**), the Board of Land and Natural Resources (Board) authorized the issuance of a perpetual non-exclusive easement to Hawaiian Telcom Services Company, Inc. (HTSC), for submarine fiber optic telecommunication cable purposes. The approval was amended at the Board meeting of March 23, 2018, agenda item D-8, for correction of the legal reference and a typographical error. The Land Office Deed No. S-29157 (“Easement”) was thereafter signed on June 29, 2018, covering an area of 0.409 acre¹ subject to a one-time payment of \$10,000, which was received. See **Exhibit 2** for the approximate location of the landing site.

Condition 18 of the Easement states that:

The parties agree that the survey description(s) and survey map(s) will be provided at a later date from the time of execution of this document and incorporated into this easement by amendment. Upon easement area determination with survey description(s) and survey map(s), if the easement area differs from the easement area stated herein, there shall be an amendment to the easement to correct the easement area, and if appropriate, an adjustment in the consideration paid for the easement. The parties further agree that if the easement area is encumbered by Executive Order, appropriate approvals if required will be obtained, and said easement will be similarly amended.

¹ 0.409 acre was cited in the Exhibit B of the November 10, 2016, Item D-10 submittal.

On November 20, 2018, staff received the map and description for as-built easement area from the consultant that was stamped by a licensed land surveyor in which the area was revised to 5.038 acres. In April 2022, Department of Accounting and General Services, Survey Division (“DAGS”) finalized the map and description citing the same 5.038 acres. There is a large discrepancy of 4.629 acres in the easement area from the alignment/length of the cable as shown on the 2016 easement map (**Exhibit 3**) and the 2022 DAGS map (**Exhibit 4**).

Staff reached out to HTSC and its consultant for an explanation of the discrepancy between the area depicted in the Easement map (Exhibit 3) and the area shown in the as-built survey (Exhibit 4), but HTSC was unable to provide an explanation at that time. In the following paragraphs, staff attempts to explain the underlying reasons that caused the discrepancy.

Alignment and Length of Easement

Upon noting the discrepancy, staff reviewed the 2016 application material originally sent in and noted that the Applicant was actually including a draft easement map as part of the application package on which 0.409 acre was noted as the easement area. The draft easement map was subsequently attached as Exhibit B to the 2016 submittal. Upon further review of the material, staff notes that the 2016 easement map actually ended at the exit of the conduit housing the cable from the shoreline for about 2,500 linear feet in the submerged land. As part of the project, from the exit, the cable would continue to be placed on the ocean floor, further noting that an easement would stop at the territorial boundary mark of three (3) nautical miles. The 2022 DAGS map attached as Exhibit 4 clearly indicated the present alignment of the as-built cable.

Width of Easement

Pursuant to a letter dated August 5, 2024 (**Exhibit 5**), with revised map and legal description attached as **Exhibit 6**, HTSC’s agent advised that the final as-built easement area should be 1.007 acres, based on a two (2) foot wide easement corridor instead of a ten (10) foot wide construction corridor which was used in the 2018 map and description of 5.038 acres. Staff noted that there was no mentioning in the 2016 submittal about the width required during the construction phase versus the final completion of the laying of the cables. In view of the typical size of similar cable, staff finds that a two-foot corridor housing the as-built cables is not unreasonable. Therefore, staff recommends the Board accept the current alignment and width of the cable corridor as shown on Exhibit 6 for a total easement area containing 1.007 acres and further subject to review and approval by the Department of Accounting and General Services, Survey Division. HTSC will pay DAGS map fee for both amendments of the easement map and description C.S.F. needed for documents.

Additional Consideration for Easement Amendment

With the increase in the final easement area (subject to review and approval by the Department of Accounting and General Services, Survey Division and subject to any adjustment thereof) additional consideration for the use of State land is appropriate pursuant to the authority provided in Condition 18 of the Easement. Staff recommends the Board authorize the determination of the amount due to the State as derived by applying the previously determined value to the larger area on a per-square-foot basis adjusted to inflation. Using the unit value from the 2017 appraisal, the following is the consideration for the additional easement area: $(1.007 \text{ acres} - 0.409 \text{ acre}) \times \$10,000 = \$24,621.03$ but minus the consideration already paid of \$10,000, the additional consideration would be \$14,621.03 and adjusting for inflation with the Consumer Price Index (“CPI”) calculator from the U.S. Bureau of Labor Statistics using May 2017 to August 2024 (data availability), the

additional consideration amount payable would be \$18,806.75, say **\$18,807**.

Pursuant to Condition 18 of the Easement mentioned above, staff recommends the Board authorize an amendment to the Easement by replacing the map currently in the Easement with Exhibit 6 and its associated legal description, further subject to review and approval by the Department of Accounting and General Services, Survey Division.

HTSC is in compliance with the terms and conditions of the Easement.


CHAPTER 343 ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in The Environmental Notice on June 8, 2016 with a Finding of No Significant Impact (FONSI).²

RECOMMENDATION: That the Board authorize the amendment of the Grant of Non-Exclusive Easement under Land Office Deed No. S-29157 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current lease amendment document form, as may be amended from time to time;
- B. Replacing the map and description currently in Grant of Non-Exclusive Easement under LOD No. S-29157 with Exhibit 6 revised map herein, further subject to review and approval by the Department of Accounting and General Services, Survey Division;
- C. Payment of additional one-time consideration as amount derived from the previously determined fair market value in 2017 adjusted to increased area with CPI inflation rate in the amount of \$18,807.00;
- D. Review and approval by the Department of the Attorney General; and
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



Darlene Bryant-Takamatsu, Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

RT 

² The Final Environmental Assessment is available at https://files.hawaii.gov/dbedt/erp/EA_EIS_Library/2016-06-08-OA-FEA-Makaha-Beach-Cable-System.pdf.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 10, 2016

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref: 16OD-146

OAHU

Grant of Perpetual, Non-Exclusive Easement to Hawaiian Telcom Services Company, Inc. for Submarine Fiber Optic Telecommunication Cable Purposes and Issuance of Construction and Management Right-of-Entry on State Submerged Lands off Makaha, Waianae, Oahu, Tax Map Key: (1) 8-4-001:seaward of 012

APPLICANT:

Hawaiian Telcom Services Company, Inc., a domestic profit corporation (Applicant).

LEGAL REFERENCE:

Sections 171-13, 17, and 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of submerged lands situate off Makaha, Waianae, Oahu, identified by Tax Map Key: (1) 8-4-001:seaward of 012, as shown on the maps labeled **Exhibits A1 & A2**.

AREA:

0.409 acre¹, more or less (**Exhibit B**), subject to review and approval by the Department of Accounting and General Services, Survey Division. See Remarks Section.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5 (b) of Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

¹ Territorial waters extend only three miles from each island.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
November 10, 2016 *cg*

D-10

EXHIBIT 1

BLNR - Issuance of Cable Easement
at Makaha

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November 10, 2016

CURRENT USE STATUS:

Requested area is vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove waterlines for submarine fiber optic telecommunication cable purposes over, under and across State-owned submerged lands.

TERM

Perpetual

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson. See Remarks Section.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on June 8, 2016 with a Finding of No Significant Impact (FONSI).

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u> x </u>	NO <u> </u>
Registered business name confirmed:	YES <u> x </u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u> x </u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Pay for an appraisal to determine one-time payment; and
2. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost. See Remarks Section.

BLNR - Issuance of Cable Easement
at Makaha

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REMARKS:

Applicant, in partnership with NEC Corporation of America¹, proposes to install a submarine fiber optic telecommunications cable at the subject location. The cable system will connect from a landing station to be built on a property owned by the Applicant [TMK (1) 8-4-002:059], and travel beneath the Farrington Highway and Makaha Beach Park [TMK (1) 8-4-001:012] before entering into the submerged lands. Applicant will apply for proper authorizations from the Department of Transportation [for Farrington Highway] and the City and County of Honolulu [fee owner of the Makaha Beach Park] over the respective portions of the cable. The subject request pertains only to the portion of cable to be installed in the submerged lands.

According to the published Final Environmental Assessment, the proposed cable system will help to meet the local demand for broadband ability and connect to other Southeast Asian countries, like the Philippines and Indonesia.

For the Board's information, under a separate request on today's agenda, Applicant is seeking the Board's authorization for the issuance of the conservation district use permit (CDUA).² Applicant requests putting the CDUA and easement request on the same Board agenda in view of the tight project time frame.

Final Easement Area

At its meeting of February 15, 2014, item D-9, the Board, among other actions, approved an easement document for another easement request regarding a seawater airconditioning waterlines system. One of the amendments regarding the provision of map and legal description is recited below:

“The parties agree that the survey description(s) and survey map(s) will be provided at a later date from the time of execution of this document, and incorporated into this easement by amendment. Upon easement area determination with survey description(s) and survey map (s), if the easement area differs from the easement area stated herein, there shall be an amendment to the easement to correct the easement area, and if appropriate, an adjustment in the consideration paid for the easement. The parties further agree that if the easement area is encumbered by Executive Order, appropriate approvals if required will be obtained, and said easement will be similarly amended.”

Staff recommends the Board authorize the use of the same condition mentioned above for the subject request. Upon approval of today's request, staff will initiate the appraisal request using 0.409 acre [which is the latest planned area over State submerged lands] as the initial easement area, subject to the condition mentioned above.

¹ NEC Corporation of America acts the developer of the system, but not the eventual grantee of the easement.

² Upon the request of the Applicant, staff places the subject easement request on today's agenda. However, its approval will be contingent upon the approval of the CDUA as described above.

BLNR - Issuance of Cable Easement
at Makaha

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November 10, 2016

Staff did not solicit comments for the subject easement request as comments were solicited during the CDUA and EA stages already.

Applicant also requests for immediate construction right-of-entry in view of the tight time line of the project.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to Hawaiian Telcom Services Company, Inc. covering the subject area for submarine fiber optic telecommunication cable purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. The parties agree that the survey description(s) and survey map(s) will be provided at a later date from the time of execution of this document, and incorporated into this easement by amendment. Upon easement area determination with survey description(s) and survey map (s), if the easement area differs from the easement area stated herein, there shall be an amendment to the easement to correct the easement area, and if appropriate, an adjustment in the consideration paid for the easement.
 - C. Terms and conditions of Conservation District Use Permit (OA-3773)
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a construction right-of-entry to Hawaiian Telcom Services Company, Inc. covering the subject area submarine fiber optic telecommunication cable purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most right-of-entry document form, as may be amended from time to time;

BLNR - Issuance of Cable Easement
at Makaha

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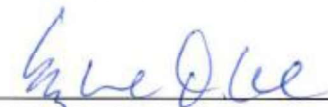
November 10, 2016

- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

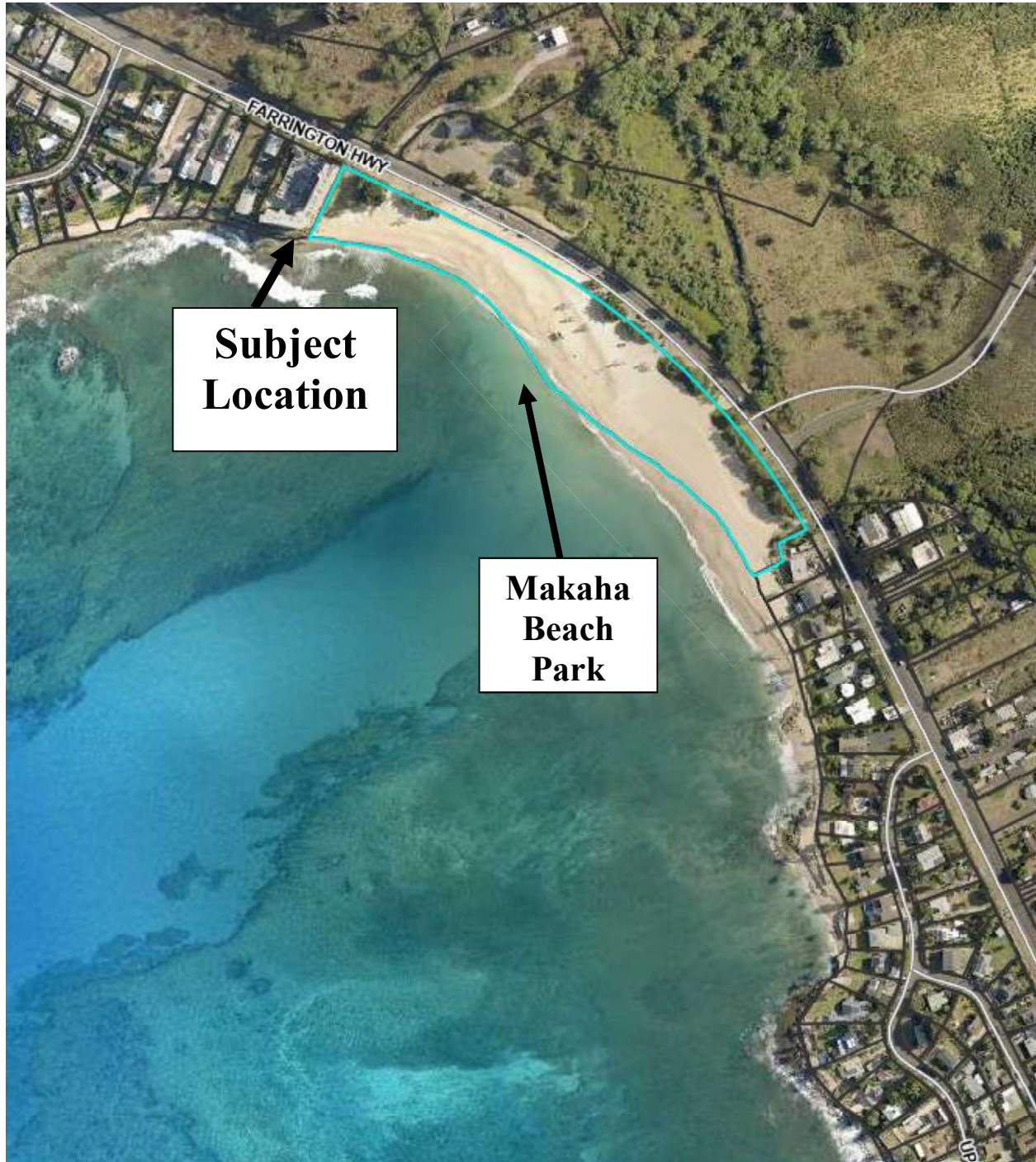
Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

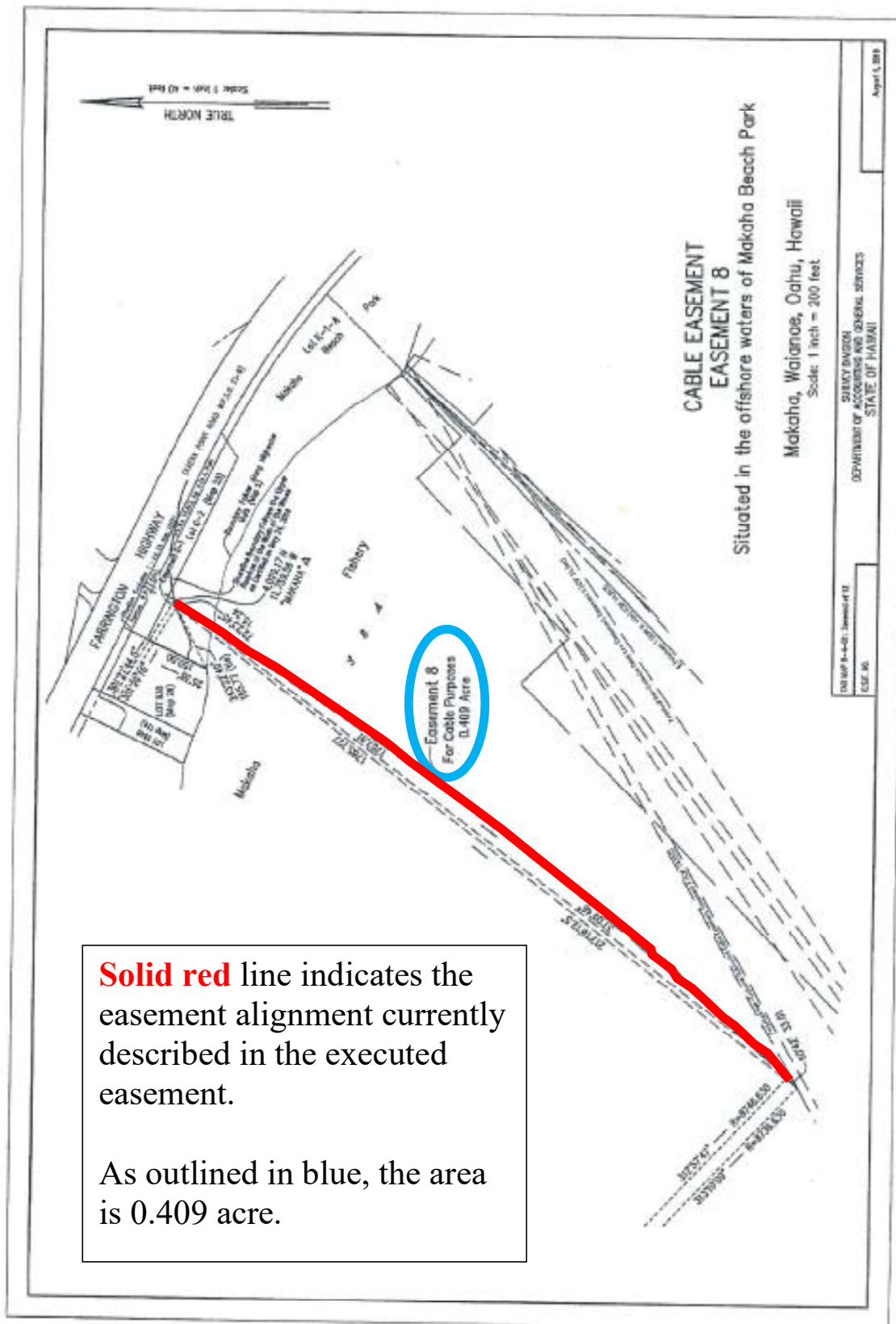

Suzanne D. Case, Chairperson





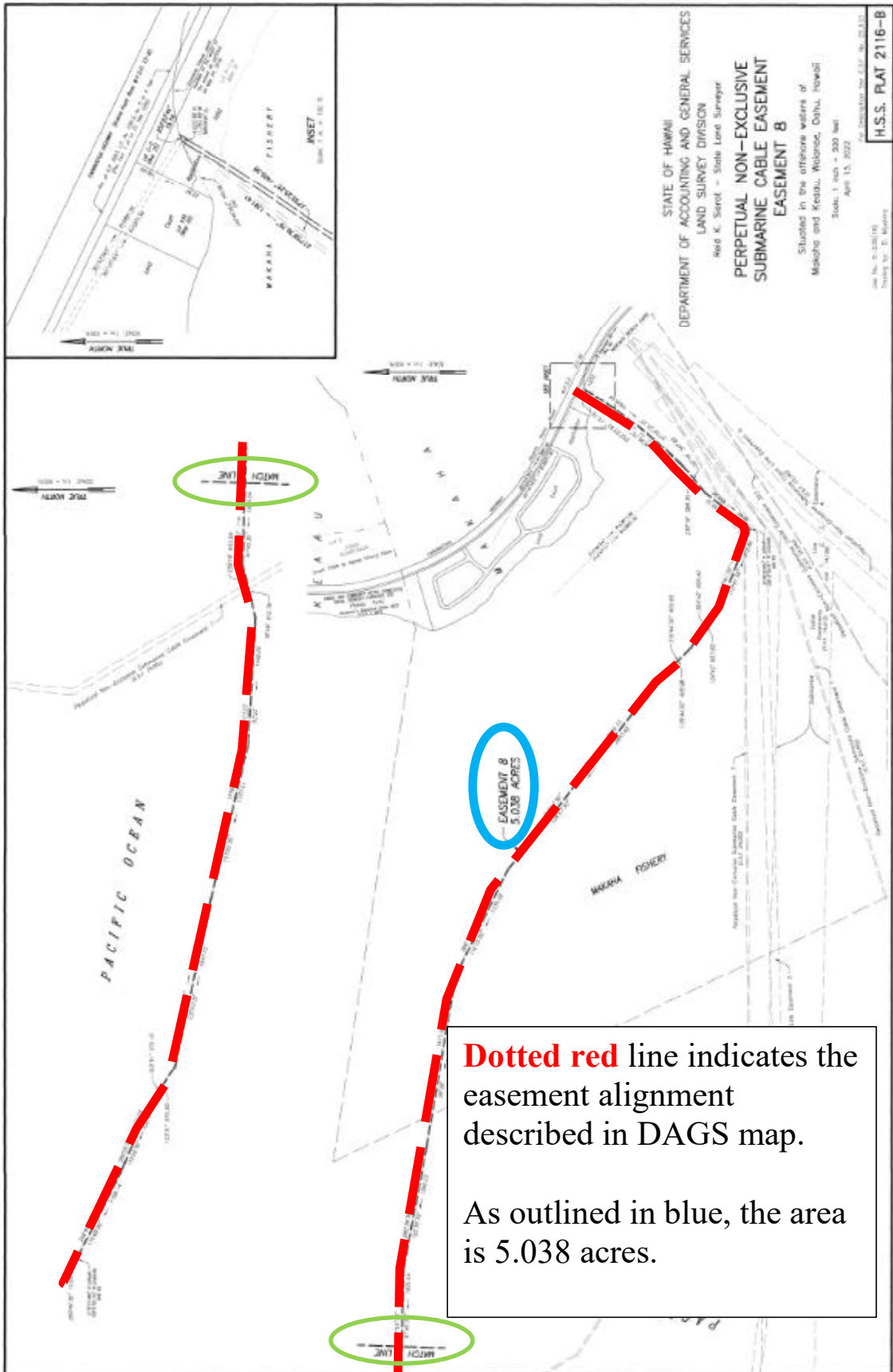
TMK (1) 8-4-001: seaward of 012

EXHIBIT 2



Solid red line indicates the easement alignment currently described in the executed easement.

As outlined in blue, the area is 0.409 acre.



Dotted red line indicates the easement alignment described in DAGS map.

As outlined in blue, the area is 5.038 acres.

2024 N. King Street
Suite 200
Honolulu, Hawaii 96819-3494
Telephone 808 842 1133
Fax 808 842 1937
eMail: rmtowill@rmtowill.com



R.M. TOWILL CORPORATION
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August 5, 2024

Mr. Barry W. Cheung
Oahu District Land Agent
Dept. of Land and Natural Resources
Post Office Box 621
Honolulu, Hawaii 96809-0621

Dear Mr. Cheung:

**Proposed Amendment to Grant of Non-Exclusive Easement between the
State of Hawaii and Hawaiian Telcom Services Company, Inc. dated June 29, 2018
(recorded 07/03/2018 - Doc No. A-67580832 at the Bureau of Conveyances)
Tax Map Key No.: (1) 8-04-001: seaward of 012**

On behalf of our Client, Hawaiian Telcom Services Company, Inc., we are requesting to amend the above-referenced Grant of Non-Exclusive Easement. This request is in accordance with Recommendation 1.B of the Board's action of November 16, 2016, which provides in relevant part:

...The parties agree that the survey description(s) and survey map(s) will be provided at a later date from the time of execution of this document, and incorporated into this easement by amendment. Upon easement area determination with the survey description(s) and survey map(s), if the easement area differs from the easement area stated herein, there shall be an amendment to the easement to correct the easement area, and if appropriate, an adjustment in the consideration paid for the easement.

The purpose of the amendment is to correct the easement area and reflect the final location and alignment of the horizontal directional drilling (HDD) conduit and placement of submarine cable. As you may recall, the easement granted by the State of Hawaii for this project (Easement 8) covered a total area of 0.409 acres based on an estimated length of approximately 1,782 linear feet and a width of ten (10) feet. The original easement was granted pre-construction utilizing the anticipated location of the HDD conduit with a 10-foot width to accommodate required construction for the installation of the HDD conduit.

After the construction and installation of the HDD conduit and placement of submarine cable, the as-built drawings were utilized to determine the final location of the conduit and cable alignment. In November 2018 we submitted an updated survey map reflecting the final alignment of the HDD conduit, however, we mistakenly continued to use the ten (10) foot wide HDD construction corridor which resulted in an incorrect easement area.

EXHIBIT 5

Mr. Barry W. Cheung
August 5, 2024
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Enclosed for your consideration is a corrected survey map showing the final location of the HDD conduit and as-laid alignment of the submarine cable with an overall easement length of approximately 21,933 linear feet. With the HDD conduit being four inches in diameter and the submarine cable being at most two inches in diameter, a two (2) foot wide easement corridor is reflected on the survey map. The two (2) foot wide corridor is appropriate for the size of the HDD conduit and is consistent with recent easements for submarine cables like Hawaiki (3-foot corridor) and Paniolo (1-foot corridor). The updated easement area as shown on the survey map is 1.007 acres.

We apologize for any confusion our prior mistake may have caused and thank you for your assistance and consideration of our request. Should you have any questions, please do not hesitate to contact my office.

Very truly yours,



David K. Tanoue, Esq.
Vice President

DKT:ts

Attachment

